

There's no constitutional protection for violating Jewish students' civil rights

A federal judge ignored the causes of antisemitism at Harvard and ruled against the Trump administration's defunding of it. That should not stand.



People hold signs during the Harvard Students for Freedom rally in support of international students at the Harvard University campus in Cambridge, Mass., on May 27, 2025. Harvard students protested after the U.S. government said it intends to cancel all remaining financial contracts with the university, U.S. President Donald Trump's latest attempt to force the private institution to submit to unprecedented oversight. Photo by Rick Friedman/AFP via Getty Images.



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(Sept. 5, 2025 / JNS) It was a good week for Harvard University and the rest of the academic establishment. On Wednesday, Allison Burroughs, a judge on the U.S.

District Court for the District of Massachusetts, ruled in Harvard's favor in its lawsuit, which seeks to overturn the Trump administration's efforts to strip the venerable institution of its federal funding because it violated the civil rights of Jewish students.

The ruling was celebrated across the political left by the anti-Trump "resistance," especially throughout academia. There, especially, President Donald Trump's campaign to hold colleges and universities accountable for their toleration and encouragement of antisemitism since the Hamas-led Palestinian attacks on Israeli communities on Oct. 7, 2023, has spread fear and dismay.

Even Harvard knows this is but one step in what is almost certainly a case bound for the U.S. Supreme Court. Nevertheless, the forces opposing the administration's effort to roll back the tide of Jew-hatred in education view Burroughs' opinion as a "rallying cry," in the words of a *New York Times* article cheering the decision.

If nothing else, it will stiffen resistance at Harvard and other schools not to replicate Columbia University's decision to settle with Washington and to sign an agreement requiring it to take steps to change its policies and behavior.

Encouraging the antisemites

Harvard's good week also comes at the start of the fall semester, a time when the pro-Hamas movement was already expected to resume its campaign of incitement against Jews and supporters of Israel. The court's action might incline leaders at some schools to recalibrate their willingness to act to protect Jewish students to avoid incurring the wrath of the Trump administration and putting their federal funding at risk.

It's clear that even if her ruling is reversed, Burroughs will have a serious impact on those seeking to keep the peace on college campuses. She has now only encouraged those seeking to enable institutions to evade their responsibility to prevent pro-Hamas mobs from running amok, as they often did in the past two years since Oct. 7.

As much as anything else, the court ruling illustrates the stark divide in American society on Jew-hatred and its causes.

The judge's decision characterizes the administration's efforts to deal with the problem as fundamentally disingenuous, claiming, as many of Trump's political foes do, that it doesn't really care about the plight of Jews on college campuses. Instead, her opinion asserts that Trump is focused on a political vendetta against liberal and left-wing opponents.

She claims that if the defunding is allowed to proceed, the cost would go beyond the potential damage to scientific and medical research, as well as other university activities dependent on government support. In her view, what is at stake is academic freedom and freedom of speech.

“The First Amendment claims here are about speech and whether the federal government is improperly infringing on the free speech rights of an academic institution and its employees,” the judge stated. “The resolution of these claims might result in money changing hands, but what is fundamentally at issue is a bedrock constitutional principle rather than the interpretation of contract terms.”

Burroughs gave lip service to the principle that fighting Jew-hatred is “indisputably an important and worthy objective.” But, she argued, since the administration’s demands go beyond those strictly related to antisemitism and called for changes in school policies, such as the implementation of diversity, equity and inclusion (DEI) mandates, as well as hiring and curriculum choices, that rendered the defunding invalid.

Invalidating Title VI for Jews

The problematic nature of Burroughs’ argument is staggering.

In her reading, Jewish students are, in theory, entitled to protection under Title VI of the 1964 Civil Rights Act, which mandates that schools engaged in discriminatory behavior are not entitled to federal funding. But Jewish students’ rights need only be protected under limited circumstances and if a political motive cannot be imputed to the government.

That’s a principle that has never been applied to any previous attempt to enforce the Civil Rights Act to protect any other minority community whose rights were infringed.

The judge also asserts that the rights of Harvard administrators, faculty and students to engage in antisemitism, in addition to other acts that put Jewish safety and rights at risk, must be viewed as somehow a higher priority. In this reading, the government’s demands that Harvard “audit, censor or dictate viewpoints of staff and students” that often lead directly to illegal acts of discrimination are invalid.

Efforts to curb discrimination in education against other minorities, such as blacks and Hispanic Americans, have never been held as somehow an unconstitutional infringement of the rights of faculty and students to engage in behavior and discourse that creates hostile environments for those groups, let alone endangering their safety. The latter has often been the case for Jews since Oct. 7.

The decision can be interpreted as ruling that Title VI can go unenforced if it can be alleged that the government’s motives to oppose antisemitism can be considered political in nature. Just as troubling is the claim of a First Amendment right of academic freedom to engage in antisemitism with impunity.

Of course, Harvard, as well as individual professors and students, has a First Amendment right to engage in antisemitic discourse or to engage in activity that creates hostile environments for Jews.

Harvard can treat advocacy for Jewish genocide—such as mob chants of “From the river to the sea” and “Globalize the intifada,” or curricula that deny Jews rights not denied to any other people—as not violating its rules, as then-Harvard president Claudine Gay testified to Congress in December 2023.

But according to the Civil Rights Act, schools that act that way don't have a right to federal funding while doing so. Yet that is exactly what Burroughs' ruling will let them continue to do.

Echoes of 'Dred Scott'

Seen in this light, Burroughs' ruling deserves to be categorized among the most vile and regrettable federal court decisions in American history.

Much like the infamous 1857 *Dred Scott v. Sandford* case, in which U.S. Supreme Court Chief Justice Roger Taney invalidated a host of existing federal laws against the spread of slavery and declared that blacks didn't have the right to protection of the law, Burroughs seems to be trying to carve out a new constitutional right to violate the civil rights of Jews.

We can't ignore the fact that—like many other lower federal court rulings since Trump returned to the White House in January—Burroughs' decision is politically motivated. A host of liberal judges, who long upheld the power of the executive branch and the powers of the presidency under Article II of the Constitution, have suddenly sought to restrict the White House's ability to govern to hamstringing Trump's efforts to make good on the promises he made to the voters that returned him to office in November 2024.

Burroughs is also utterly clueless about the entire subject of antisemitism.

She labeled Trump's efforts to force schools to abandon their policies of indoctrination in the woke DEI catechism as unrelated to the rights of Jews. Yet it is precisely those progressive doctrines of critical race theory, intersectionality and settler-colonialism that are tied to DEI that specifically exclude Jews from the ranks of protected minorities and falsely label them and the planet's one Jewish state as “white” oppressors that have fueled the post-Oct. 7 surge in Jew-hatred.

DEI threatens everyone

It is no more unreasonable for the Trump administration to demand the end of DEI at colleges and universities to combat antisemitism than it would be for it to order that they abandon hiring, admissions and curricula policies that enshrined white supremacy as their institutional orthodoxy to roll back anti-black racism.

The secular religion of woke progressivism targets more than Jews. Indeed, the way these toxic ideas attack Jewish rights is something of a sidebar to their primary focus on undermining the canon of

Western civilization and the American republic's founding values of equal opportunity—the opposite of DEI's equity with its mandate for quotas and discarding of individual rights.

With its dismal vision of a country mired in perpetual and immutable race war between the class of approved minorities, who are always victims and always in the right, and oppressors who are always wrong, DEI is a deep-seated threat to American society and any hope for civil peace and democracy.

Trump was right to prioritize toppling and rolling back the grip of woke-ism on education, business, popular culture and the arts, as well as government. He was also right to identify that the way this doctrine endangered Jews was the lever with which he might end the reign of DEI woke commissars. In this case, as in so many others, Jews were the canaries in the coal mine, alerting the nation to the general threat to everyone's rights.

Stripping federal funding from schools like Harvard was the only way to force them to do something about the antisemitism they were tolerating and encouraging. The government had already proven itself incapable of doing anything more than slapping schools on the wrist for Title VI violations of Jewish rights—and only after lengthy investigations by the U.S. Department of Education that merely reinforced these institutions' belief that they need not take the issue seriously.

If the opinion of Burroughs prevails, then it will send a signal to universities and colleges and to antisemites everywhere that it is open season on Jews.

Given the way antisemitic attitudes are rapidly spreading due to the mainstreaming of blood libels against Israel committing a so-called “genocide” in Gaza, the potential consequences of a defeat for the Trump administration on this issue are frightening. Federal appeals courts and, if necessary, the U.S. Supreme Court, must act to ensure that her despicable screed is consigned to the dustheap of judicial infamy along with Taney's *Dred Scott* decision.

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